

When retailers or other persons issue coupons which entitle the bearer to obtain an item of tangible personal property free of any charge whatever and not conditioned upon the purchase of other property, the furnishing of such tangible personal property does not constitute a sale under the Retailers' Occupation Tax and the retailers do not incur Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.2125(c). (This is a GIL).

March 29, 1999

Dear Xxxxx:

This letter is in response to your letter dated February 23, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

This is a request for a Sales/Use Tax Ruling

Facts:

COMPANY is a manufacturer and wholesaler of Dietary replacement and supplemental products. Most of the companies sales are to Hospitals, Nursing Homes, and like establishments in various states throughout the USA including Illinois.

COMPANY has entered into a contract with an unrelated third party company. Basically COMPANY customers turn in proof of purchase documents to Third Party Company. Third Party Company verifies the proof of purchase documents, assigns points to the customers, tracks said points, and sends out monthly points statements to the customers. The customers are supplied with a catalog from which to order point redemption items. The catalog consists of 200 plus industrial type pots, pans, electric mixers, blenders, and other kitchen products, as well as various COMPANY dietary products. Customers redeem their points by ordering items from the catalog thru Third Party Company. Third Party Company drop ships the merchandise. There are no additional costs to the customer.

COMPANY has other non-taxable and taxable sales in Illinois. Third Party Company does not.

Ruling Request

A Ruling is requested as to whether this redemption activity constitutes a taxable sale under the Illinois Retailer's Occupation

Tax Statutes. If taxable, please rule further as to whether it is COMPANY or Third Party Company that must report this activity.

Please find enclosed a copy of 86 Ill. Adm. Code 130.2125 which is a Department regulation concerning trading stamps and coupons. This regulation states, in part, as follows:

- a) Trading Stamps. Persons who engage in the business of transferring tangible personal property upon the redemption of trading stamps shall be deemed to be engaged in the business of selling such tangible personal property at retail and shall be liable for and shall pay the tax imposed by the Retailers' Occupation Tax Act on the basis of the retail value of the property transferred upon redemption of such stamps. When merchandise is paid for partly in cash and partly by surrendering a trading stamp valued at a specific amount, the total amount (including the value of surrendered trading stamp) is subject to Retailers' Occupation Tax.

When retailers or other persons issue coupons which entitle the bearer to obtain an item of tangible personal property free of any charge whatever and not conditioned upon the purchase of other property, the furnishing of such tangible personal property does not constitute a sale under the Retailers' Occupation Tax and the retailers do not incur Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.2125(c). However, retailers or other persons issuing such coupons, as donors, incur Use Tax liability on their cost price of the tangible personal property actually transferred as a result of such coupons.

Therefore, vendors who issue such coupons are responsible for the Use Tax incurred as they are considered the donor of the item. Customers of retailers that redeem the coupons do not incur any tax liability. However, vendors sometimes request reimbursement of the tax from customers who receive the free item. This provision is generally included in the wording of the coupon.

When a retailer issues a coupon to a purchaser which entitles the purchaser to a free item conditioned on the purchase of a separate item (two-for-one, buy one get one free, etc.), the retailer's gross receipts are measured only by the amount actually received from the purchaser (the cost of one item). The result is that tax can only be charged on the amount actually received from the purchaser. The retailer, in this situation, cannot charge tax based upon the value of the free item received because technically the item was not free and no gift was intended. The retailer was simply offering a special price for both items sold.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

ST 99-0119-GIL

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.